



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	State Board of Social Services
VAC Chapter Number:	22 VAC 40-675
Regulation Title:	Personnel Policies for Local Departments of Social Services
Action Title:	Establishment of Proposed Regulation
Date:	January 30, 2003

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulation was originally presented in its proposed state in August of 2002. Due to the large number of comments received, the regulation has been revised and is now being re-proposed. The regulation will formalize a consistent, appropriate and uniform structure for the development of a personnel system for local departments of social services in Virginia.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the

specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Section 63.2-217 (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+63.2-217>) provides the general authority for the State Board of Social Services to adopt regulations necessary for the administration of social services programs under Title 63.2 of the Code of Virginia (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC6302000>). Section 63.2-219 (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+63.2-219>) requires the State Board of Social Services to “. . . adopt regulations to maintain such education, professional and training requirements and performance standards, including such regulations as may be embraced in the development of a system of personnel administration meeting requirements of the Department of Health and Human Services under appropriate federal legislation relating to programs administered by the Board. . . .”

This regulation will provide the minimum requirements necessary to ensure the personnel system used to administer Title 63.2 of the Code of Virginia meets state and federal requirements.

The Federal Standards for a Merit System of Personnel Administration, Section (5 CFR, Part 900, subpart F, (b) <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi>) states that certain federal grant programs require, as a condition of eligibility, that State and local agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. The proposed regulation addresses and fulfills the requirement of establishing a merit personnel system.

The Office of the Attorney General has certified that the State Board of Social Services has the statutory authority to promulgate this regulation and that this regulation comports with applicable state law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The proposed regulation will satisfy the legal requirement that the State Board of Social Services adopt regulations to establish a merit personnel system. The regulation details the options local departments of social services have in the administration of local personnel systems to ensure fairness and consistency in treatment of employees and potential employees. Consistency in personnel policies across local departments strengthens the social service network and provides a workforce that is better equipped to protect the health, safety and welfare of the citizens of the Commonwealth. The goal of this proposed action is to provide and formalize a consistent,

appropriate, structure that ensures the welfare of employees and potential employees in local departments of social services.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

This proposed regulation will provide an additional legal basis for policies and practices in local departments of social services. Many of the policies are required as a condition for continued receipt of federal grants. The proposed regulation includes the following topics: classification and compensation; recruitment and selection; employee status and benefits; employee performance evaluation; equal employment opportunity; standards of conduct; grievance procedures; and other employee relations practices.

The regulation proposed in August contained details similar to those in the policy manual the Department developed for guidance for the local departments. After receiving a large number of comments critical of the level of detail, the Department reviewed the proposed regulation using a workgroup composed of local and state staff and decided to revise and resubmit the regulation at the proposed stage of the regulatory process. The regulation now being submitted has been reduced to the minimum necessary to meet federal and state requirements and the needs of the local departments of social services. Detailed guidance will be provided to local departments in policy manuals.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The proposed regulation will help ensure uniform and equitable practices in the 121 local departments of social services in the Commonwealth. This regulation will support a qualified, representative workforce, factors strongly associated with effective provision of services to local citizens. There are no known disadvantages to this regulation.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-

going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

There will be no additional cost to the state, localities or the public to implement this regulation. This action meets the requirements in the Code for the Board to adopt regulations relating to local department personnel systems. The regulation will cover practices followed by the 121 local departments of social services. Most of these practices have been addressed in policy and procedures manuals.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

This is a re-proposed version of a new regulation. Changes from the original proposed regulation were made based on comments received during the public comment period. In addition, there are technical changes as a result of the recodification of Title 63.1 to Title 63.2. The majority of comments received were critical of the level of detail contained in the proposed regulation. The Department agreed with those comments and as a result, the regulation being re-proposed is less than half the length of the original. Changes made to the original proposed regulation include:

Part I. General Provisions.

22 VAC 40-675-10. Definitions: The definitions for "Commission", "Compensation Schedule and Plan", "DSS' DHRM", "Local Hiring Authority", "Local Jurisdiction", "On-call", "Recruitment Announcement", "Recruitment Announcement Period," Referral List, State Board, and WCA were deleted. Definitions for "Board", "Deviate" and "Salary Range" were added. Definitions for "Class", "Commissioner", "Local Board", "Local Department", "Local Director", and "Statewide Classification Plan" were modified.

22 VAC 40-675-20. Local Agency Designation: Level Designation and caseload level were deleted.

22 VAC 40-675-30 through 22 VAC 40-675-60 were reorganized to clarify Board, Department and Local Departments of Social of Services roles and responsibilities and options. The option for agencies to deviate in grievance procedures was deleted to be consistent with Code of Virginia.

Part II. Position Classification and Compensation.

22 VAC 40-675-70 through 220 was changed to clarify the Board and Department roles and responsibilities. Changes removed procedural and policy details, and added a reference to adult protective services and language addressing bonuses for employees of local department. The title of Part II I has been changed to State Classification and Compensation and now includes sections 22 VAC-675-60 through 120.

Part III. Recruitment, Screening and Selection of Local Agency Employees.

22 VAC 40-675-230 through 260 was revised. Extensive procedural details were removed. A requirement for local practices to meet specific merit principles was added. Part III has been changed to “Recruitment and Selection of Local Department Employees” and now includes 22 VAC-675-130.

Part IV. Employment Status and Benefits.

22 VAC 40-675-270 through 320 was comprised of extensive procedural detail, which has been removed. Part IV now covers types of employees, a requirement for reimbursements to be in accordance with Department policies and procedures, and termination or separation from service. This part now includes sections 22 VAC-675-140 through 160.

Part V. Employee Performance.

22 VAC 40-675-330 through 360 detailed specific performance standards, scoring procedures, methodology used to complete performance forms, filing procedures and the requirement for local agencies to forward copies of forms to the review. These procedural details have been removed. Part V now includes only 22 VAC 40-674-170 which addresses performance evaluation of the local directors and the local directors responsibilities for evaluation of local employees.

Part VI. Equal Employment Opportunity.

22 VAC 40-675-370. Details on the preparation of Affirmative Action Plans were deleted. Part VI. is comprised of 22 VAC 40-675-180 and covers the Board’s promotion of equal opportunity in the recruitment and selection process. It also requires local departments to file affirmative action plans, provides recourse for employees or applicants who believe they have been discriminated against and requires that local departments cooperate in investigations.

Part VII. Standards of Conduct

22 VAC 40-675-380 through 440. Excessive policy and procedural details were removed. The grievance procedure was removed and now is included Part VIII section 22 VAC 40-675-200. Part VII now contains 22 VAC 40-675 and covers the intent and application of the standards of conduct.

Part VIII. Other Employee Relations

22 VAC 40-675-450. Unnecessary details were eliminated and the information on political activity and outside employment was retained. This information is now contained in Part IX. Part VIII was renamed to “Grievance Procedure” and contains only section 22 VAC 40-675-200.

Part IX is new. The title is “Other Employee Relations Policies” This part now includes 22 VAC 40-675-210 through 220. This information was formerly included in Part VIII and covers political activity and outside employment.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

No alternatives to this proposed regulation have been considered. The regulation provides a uniform, legal basis for personnel policies promulgated by the State Board of Social Services as required by the federal Department of Health and Human Services.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

A total of 24 agencies and individuals submitted comments at the proposed stage. These comments addressed editorial and substantive content changes. Editorial changes were made, as needed.

Twenty-two of the 24 comments strongly opposed the detailed level of the proposal. As originally proposed, the regulation would require ongoing regulatory review for the smallest of operational procedure changes. The proposed regulation needs to be flexible to allow the Department and local departments of social services to adapt to changes in laws that impact operational procedures. Upon review of these comments and the proposed regulation, the Department submitted a re-proposed regulation. The re-proposed regulation presents personnel policies and procedures at its broadest level, allowing for flexibility, while being in compliance with federal requirements. As a result, many of the recommended substantive changes, especially those related to Employment Status and Benefits, Performance Management, Standards of Conduct and Other Employee Relations Policies now apply to the Administrative Manual for Local Departments of Social Services rather than the regulation. Review of the Administrative Manual will begin after the promulgation of this regulation.

Twenty of the 24 comments expressed concerns regarding the State Board of Social Services statutory responsibility and oversight function of local departments of social services. The authority of the State Board of Social Services as presented in the proposed regulation is in

compliance with the Code of Virginia, which does not include a provision that allows the State Board of Social Services to delegate its approval authority to the Department or a designee.

Twenty-two of the 24 comments addressed issues that applied to Part II, Classification and Compensation. In the area of classification, recommendations were made to delete classification factors such as caseload standards. Upon review of personnel and finance operational procedures, classification factors based on caseload standards were deleted from the proposed regulation.

Twenty-three comments addressed compensation including the areas of reimbursable and non-reimbursable steps, on-call pay for child and adult protective services, compliance with Fair Labor Standards Act, and providing flexibility of compensation options at the local department level to ease salary compression and recognize employee performance through bonuses.

The proposed regulation clarifies the definition of salary ranges to include salary grades and pay steps of intervening increments from the minimum to the maximum established for each grade, which includes reimbursable and non-reimbursable steps. Decisions regarding compensation shall be in compliance with § 63.2-330 of the Code of Virginia.

The 2002 Appropriations Act mandated the Department to establish minimum standards of training and provide educational opportunities to qualify social workers in the field of adult protective services to determine whether reports of adult abuse, neglect, or exploitation are substantiated and to provide training and technical assistance to the adult protective services twenty-four-hour toll-free hotline. As a result of the change in the law, the proposed regulation includes on-call pay for Adult Protective Service workers. On-call and overtime provisions shall comply with the Fair Labor Standards Act, and will be clarified in policy.

The proposed regulation broadens the definition of Local Compensation Plan to include other pay practices, which will provide flexibility for the State Board of Social Services to approve other pay actions that they deem necessary and that are in compliance with federal and state law. Bonus payments to local departments of social services employees shall be in compliance with § 15.2-1508 of the Code of Virginia.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Through the examination of the proposed regulation, relevant public comments and use of Regulations Committee comprised of local departments of social services directors and Department representatives, it has been determined that the proposed regulation is clearly written and easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The Department will review this regulation within four years of its implementation to evaluate any need for amendments. Goals will include timely action on local personnel actions and positive feedback on clarity, and effectiveness of the regulation.